

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF OUR HOUSE, INC.

Petitioner

Richard Bienvenue

Michael Nott

Craig Hedberg

Jennifer V. Tereyla

Stephen W. McLaughlin

James L. Baish

For the Petitioner

Stuart R. Barr, Esquire

Attorney for the Petitioner

Martin Klauber, Esquire, People's Counsel

In Support of the Petition

Before: Martin L. Grossman, Hearing Examiner

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Board of Appeals Nos. S-717-B
(OZAH Referral No. 09-20)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-717-B, filed on March 5, 2009, seeks to modify existing Special Exception, S-717-A, under which Our House, Inc. has operated a facility at 19715 Zion Road, Brookeville, Maryland, for up to 16 young men since 2002.¹ “Our House” is a non-profit residential training program, which offers educational, vocational and psychological rehabilitation services for at-risk male youths. It currently has 16 residents with an average age of 17 to 18. The property was previously used by other owners for various treatment facilities.² Petitioner acquired the 137.18 acre property (Tax Account Number 08-03497407), and on July 28, 1999, the special exception was transferred to Our House by the Board of Appeals (Exhibit 15(b)(1)).

Subsequently, Petitioner created a Transfer of Development Rights (TDR) easement affecting about two thirds of the 137 acre property (Exhibit 15(d)), but not the 40 acre eastern portion of the property which is specified as the subject site for this special exception. The Board of Appeals, on September 9, 2008, accepted the special exception site as the designated 40 acres unencumbered by the TDR easement affecting the remainder of the 137-acre property (Exhibit 15(b)(2)). The Board also found that the special exception meets the criteria for a nursing or

¹ Petitioner operated Our House Youth Home at other locations from 1993 to 2002.

² The history of the special exception at this location is set forth in the Statement in Support of its Special Exception Modification Application (Exhibit 3, pp. 3-4):

In 1960, the Montgomery County Board of Appeals (the “Board”) first granted Special Exception approval to operate a “hospital, sanitarium, nursing, or care home” on approximately 40 acres of the Property (Case No. 867). At that time, the facility could accommodate a maximum of 20 patient beds. In 1966, the Board approved an expansion from 20 to 30 beds (Case No. 2048), and in 1979, the Board approved a second expansion from 30 to 50 beds (Case No. S-717). The Board adopted numerous resolutions in response to the 1979 expansion, which extended the expansion’s proposed implementation until December 31, 1985. However, the facility never achieved the 1979 expansion.

In 1985, the Board approved a transfer of the special exception holder. Later, in 1987, the Board approved another expansion for the facility from 50 (only 30 were in use) to 81 beds, which included the construction of a one-story building that could house 51 patient beds and would require 150 parking spaces (S-717-A). Seneca House, a treatment facility relocated to the Property from Germantown, Maryland, provided 34 of the 51 newly proposed beds (S-1187). The Board extended the 1987 expansion until 1992 through multiple resolutions. In addition, it supplemented the proposed one-story building with a temporary trailer due to declining service demand.

In 1992, the Board approved another transfer of the special exception holder. Lastly, in 1999, the Board approved a transfer of the special exception holder to Our House.

domiciliary care home under Zoning Ordinance §59-G-2.37. Exhibit 15(b)(2) and Tr. 9-39. This finding was necessary because the Board had initially granted the special exception approval to operate a “hospital, sanitarium, nursing, or care home,” and that broad category was subsequently eliminated by the Zoning Ordinance and replaced by several different types of special exceptions, of which a nursing or domiciliary care home (§59-G-2.37) is one.

The subject special exception modification is sought to permit : 1) The construction of a new two-story dormitory building; 2) An increase in number of residents (beds) utilized from 16 to 24, with flexibility to increase the number of residents (beds) to 32; 3) An increase in number of staff on site from 11 to 13 at any one time, with flexibility to increase the number of on-site staff to 16; and 4) Provision of a parking area on the property consisting of 34 parking spaces.

The hearing in this matter was initially scheduled for July 24, 2009 (Exhibit 18). It was continued at Petitioner’s request, and was eventually scheduled for October 2, 2009, by notice dated July 9, 2009 (Exhibit 22).

Petitioner submitted many of letters from individuals and organizations extolling the virtues of the Our House program. Exhibit 23(c). There were no opposition letters from the community regarding the proposed special exception modifications.

On September 1, 2009, the Technical Staff of the Maryland-National Capital Park and Planning Commission filed its Report (Exhibit 26), which recommended approval of the Modification Petition, with conditions that would limit the number of residents (beds) to 24 and the number of on-site staff to 13.³ On September 17, 2009, the Montgomery County Planning Board voted unanimously to approve the special exception modification, with the conditions recommended by Technical Staff (Exhibit 27).

The Hearing went forward as scheduled on October 2, 2009. There was no opposition, and

³ The Technical Staff Report, Exhibit 26, is frequently quoted and paraphrased herein.

the record was held open until October 12, 2009, to allow Petitioner to file additional material responsive to matters raised at the public hearing. On October 12, 2009, Petitioner filed a revised site plan (Exhibit 32(a) and (b)), which corrected an error in the notes, and a letter requesting conditions negotiated with the Martin Klauber, the People's Counsel (Exhibit 32). The record closed, as scheduled, on October 12, 2009.

Zoning Code §59-G-1.3(c)(4) provides that the public hearing on modification applications must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications, and if the total floor area will be expanded by more than 25% or 7,500 square feet, the Board may review "the underlying special exception," but only to a limited extent, as specified in Zoning Ordinance §59-G-1.3(c)(4)(A). That section provides:

(A) *After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.* [Emphasis added.]

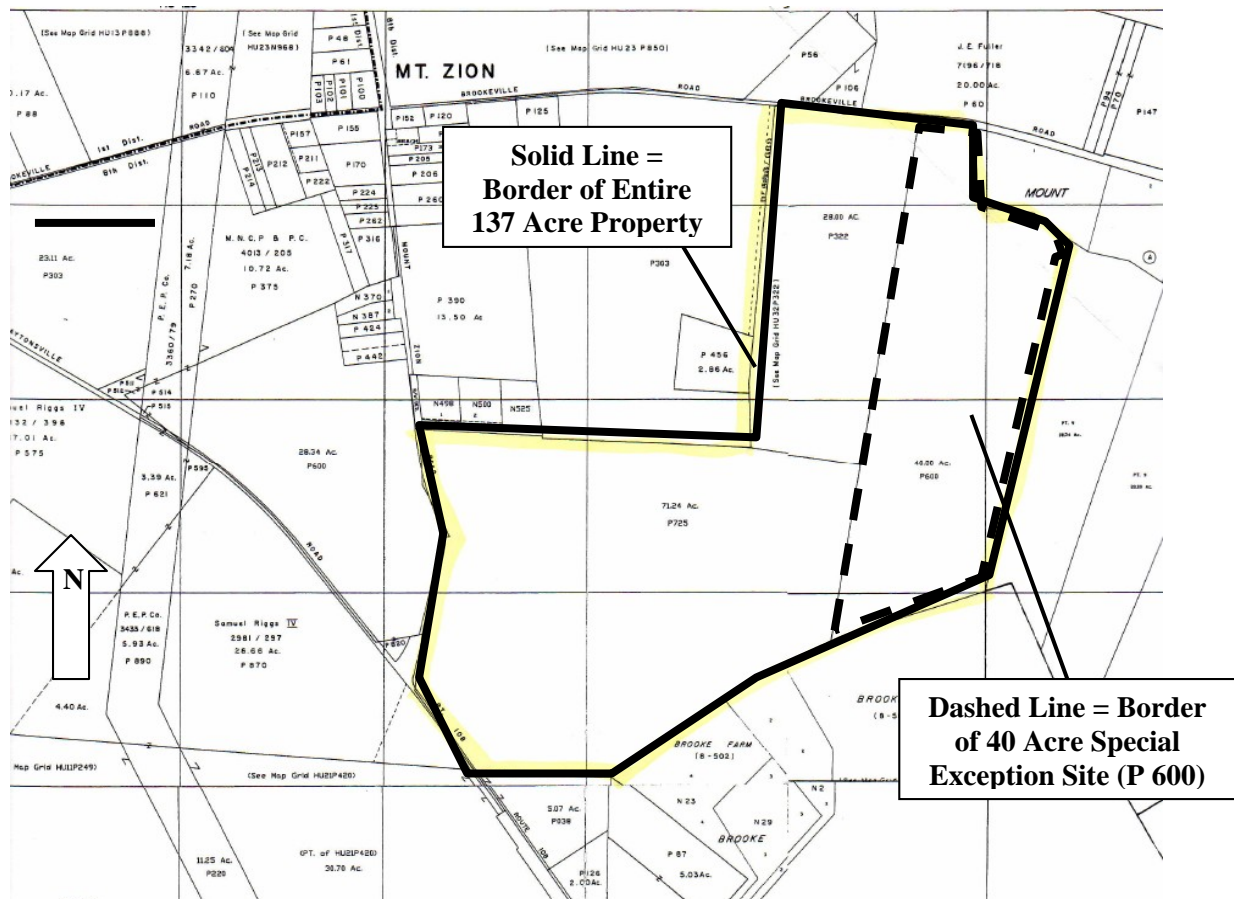
In the subject case, the planned construction of a new, two-story dormitory, as shown on the site plan (Exhibit 32(b)), will expand the floor area by 19,354 square feet (*i.e.*, more than 7,500 square feet). If the Board also finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, then the Board could require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26.

As will appear more fully below, the Hearing Examiner finds that the proposed modifications would not change the nature or character of the special exception, nor are the proposed changes so extensive as to create substantial adverse effects on the surrounding neighborhood. The Hearing Examiner concludes that the petition should be granted.

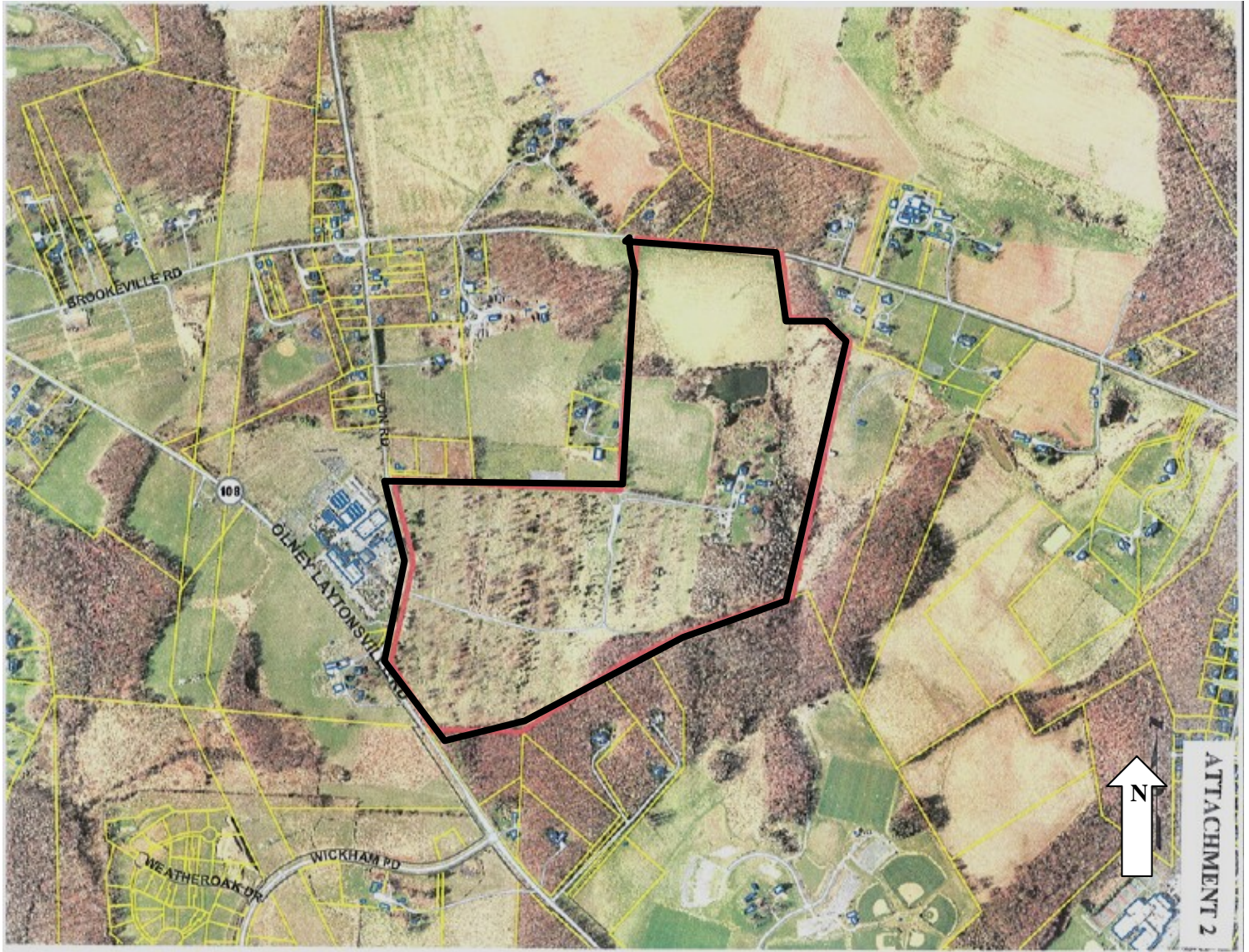
II. FACTUAL BACKGROUND

A. The Subject Property and Surrounding Neighborhood

The subject property is located at 19715 Zion Road, Brookeville, Maryland, on the south side of Brookeville Road, to the east of the intersection of Zion Road and Olney-Laytonsville Road (MD Rt. 108). The property (identified as Lot 1, Mt. Zion, on the site plan (Exhibit 32(b)) is approximately 137.18 acres in size and is in the Rural Density Transfer (RDT) Zone. The portion of the property subject to the special exception modification request is a 40-acre section located on the east side of the property, which is identified as parcel P600 on the zoning map (Ex. 17) and the Tax map (Ex. 16):



The property and its surroundings can also be seen on the following aerial photo, Attachment 2 to the Technical Staff report (Exhibit 26).



Technical Staff describes the property (Exhibit 26, pp. 8-10) as within the Hawlings River subwatershed, which is part of the Patuxent River watershed.

Two streams traverse the property. The northern stream includes a pond, wetland, and a partially forested environmental buffer. The southern stream also has a wetland and its partly forested environmental buffer. An environmental buffer that

includes a floodplain for an offsite stream and wetland area lies along part of the eastern property boundary.

. . . Much of the property has rolling topography. The eastern portion of the property has some areas of steep slopes that drain towards the offsite floodplain, stream, and wetlands.

Outside the environmental buffers, the property is mostly in field cover. An area of tree cover, predominantly consisting of Bradford pear trees, exists on the southern part of the property near the southern environmental buffer. The existing dormitory, barn, farmhouse, septic system, and other structures are located in the south central portion of the site.

The Patuxent River Primary Management Area (PMA) covers the eastern, northern, and southern portions of the site . . . approximately 82.4 acres of the 137.18-acre site.

The special exception application does not cover the entire subject property. Only the eastern 40.32 acres of the property is subject to the special exception. Of the part of the property that is subject to the special exception application, 36.25 acres (90% of the subject property) lie within the PMA.

Category I conservation easements cover most of the environmental buffers on the property.

The site is served by well and septic,⁴ and Petitioner described the existing property improvements in its statement in support of the application (Exhibit 3, p. 5):

The Property was originally constructed as a farm property with various barns and a large residence. The Property is currently improved with five structures: (1) a 2,954 square foot, three-story farm house used for administrative and office space (*see Photographs* #4, #5, and #6); (2) a 1,120 square foot, one-story cottage used for storage of donated items (*see* right side of *Photograph* #4); (3) a 2,531 square foot barn used for storage of farm and construction equipment (*see Photograph* #9), (4) a 2,975 square foot “chicken coop” converted into a wood shop for training (*see Photograph* #10); and (5) a 3,496 square foot, two-story brick and frame residence used as the existing residence hall and kitchen (*see Photographs* #7 and #8). This building currently houses Our House’s 16 young men in 8 bedrooms with shared living and dining spaces.

The referenced photographs of the existing site, from Exhibit 11, are depicted on the following pages.

⁴ Technical Staff erroneously reported that the site was served by public water and sewer service operated by the WSSC (Exhibit 26, p. 14). In fact, the property is served by well and septic. Tr. 41. Aside from that, Petitioner accepted the findings and conclusions of the Staff report.



1. Location of proposed new dormitory (facing south)



2. View from location of proposed new dormitory (facing east)



3. View of existing parking lot from location of proposed new dormitory (facing northwest)



4. View of existing Farmhouse from location of proposed new dormitory (facing north)



5. Front of existing Farmhouse used for administrative offices (facing north)



6. Back of existing Farmhouse used for administrative offices (facing south)



7. Front of existing dormitory (facing northwest)



8. Back of existing dormitory (facing east)



9. Existing Barn (facing north)



10. Existing "Chicken Coop" used for Trades (facing east)

Technical Staff defines the general neighborhood within which the subject property is located as generally bounded by Brookeville Road to the north, Tarantino Road to the east⁵, Olney-Laytonsville Road to the south and Zion Road to the west. Exhibit 26, p. 4. Staff's definition of the neighborhood is coextensive with the property's borders at some locations, presumably because the size of the property serves as its own buffer. Petitioner does not dispute this definition. Given the low level of activity on the site that might impact any neighbors, the Hearing Examiner accepts this definition.

Staff describes the area surrounding the property as including single-family homes and agricultural land uses (Exhibit 26, p.4):

The property to the north across Brookeville Road is agricultural land in the RDT zone. The properties to the south contain single-family detached homes in the RDT zone and the Olney Boys and Girls Club. The property to the east is agricultural land in the RDT zone. The area west of the property across Zion Road consists of single-family detached homes in the R-200 zone, a nursery, and Mount Zion Park.

B. Proposed Modifications

As mentioned in Part I of this report, the subject special exception modification is sought to permit : 1. The construction of a new two-story dormitory building; 2. An increase in number of residents (beds) utilized from 16 to 24, with flexibility to increase the number of residents (beds) to 32; 3. An increase in number of staff on site from 11 to 13, at any one time, with flexibility to increase the number of on-site staff to 16; and 4. Provision of a parking area on the property consisting of 34 parking spaces.

1. The New Dormitory:

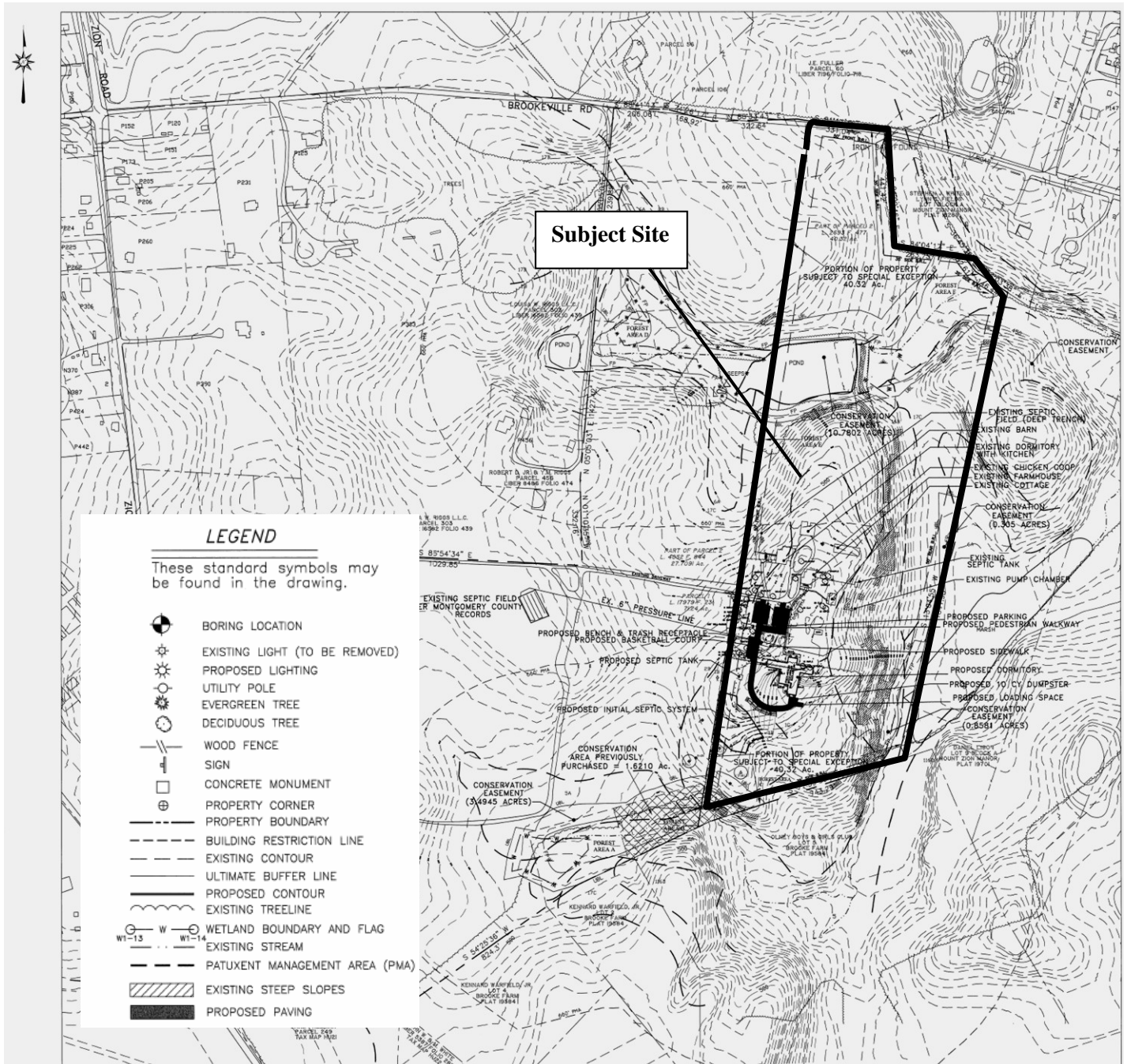
Our House proposes to construct a new dormitory in order to alleviate crowded conditions in the existing dormitory and to provide each resident with his own room. In addition to providing single occupancy bedrooms, the new dormitory building will also provide space for counseling, two

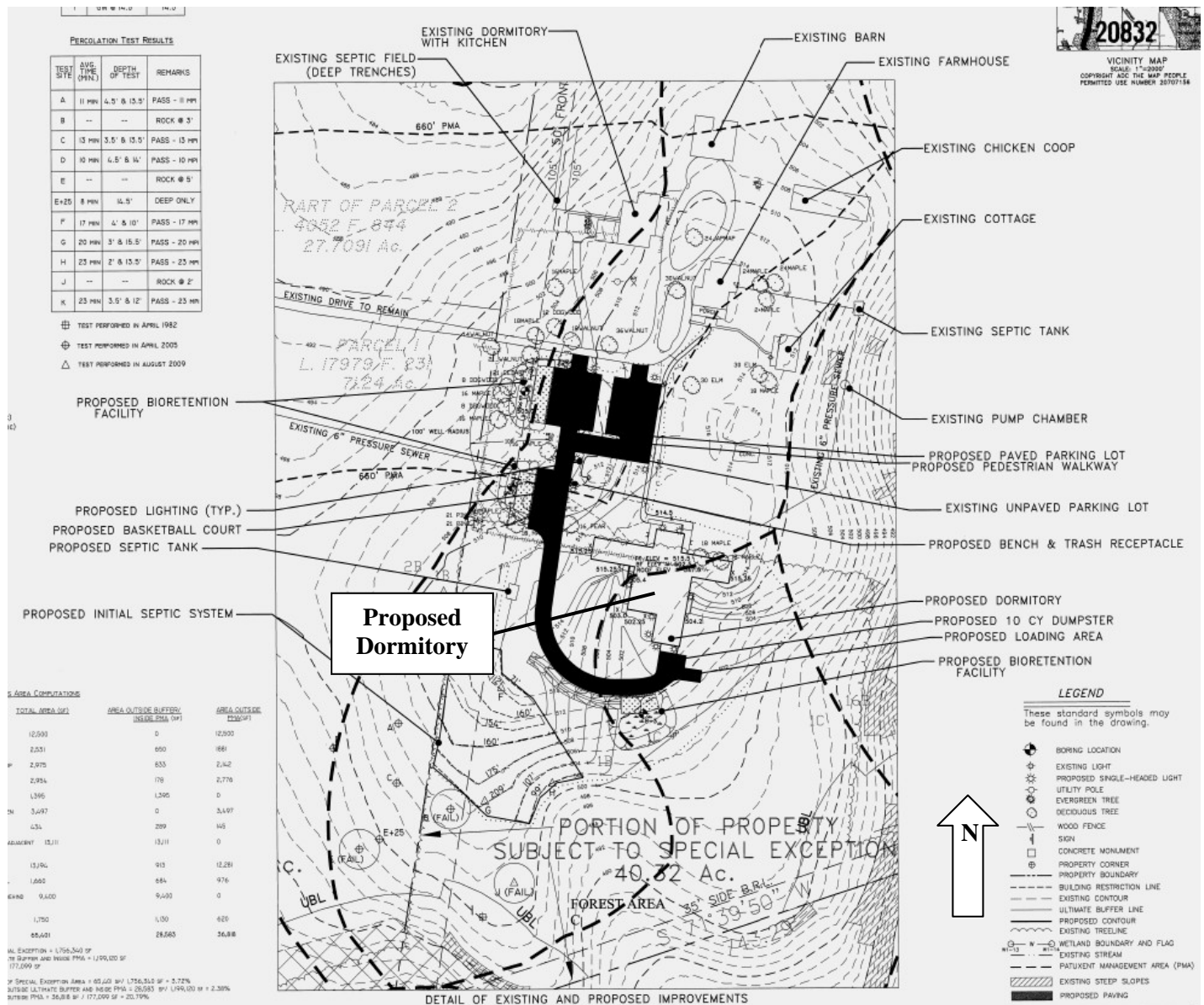
⁵ Tarantino Road, as shown in the vicinity map on the site plan (Exhibit 32(a)), is mostly to the west (not east) of the northern leg of the subject property.

classrooms, a sick room, recreation space for television and games, a community room for quiet study and for receiving guests, a dining hall for all the residents and attending faculty, seated at one family-style table, a commercial kitchen, a laundry facility, appropriate auxiliary facilities such as showers and toilets, and a central station for 24-hour supervision. Exhibit 3, p. 6. The existing structures on site and the proposed location of the new building and other facilities can be most easily seen on the following image from the “Concept Site Plan” (Exhibit 5(a)):



The formal Special Exception Site Plan consists of two pages. Exhibit 32(a) is depicted below and shows the entire property, and Exhibit 32(b) is reproduced on the next three pages, and shows a detailed view of the southern portion of the 40-acre special exception site.





ZONING TABLE: RDT (BASED ON AREA OF DEVELOPMENT)

STANDARD	REQUIRED	PART OF PARCEL 2
MINIMUM LOT AREA	25 AC.	40.32 AC.
MINIMUM LOT WIDTH AT STREET	25 FEET	277 FEET
MINIMUM LOT WIDTH AT FRONT BRL	125 FEET	289 FEET
MAXIMUM LOT COVERAGE	10%	1.3%
MAXIMUM BUILDING HEIGHT	50 FEET	31.2 FEET
FRONT BRL	50 FEET	103.1 FEET
SIDE BRL	35 FEET	357.2 FEET
REAR BRL	50 FEET	318.2 FEET

GENERAL NOTES

I. PROPERTY DATA

LEGAL REFERENCE: LOT 1 MT ZION-OUR HOUSE
 TOTAL PROPERTY AREA: 137.18 ACRES OR 5,975,560.8 SQUARE FEET
 AREA OF DEVELOPMENT: PART OF PARCEL 2; LIBER 2693 FOLIO 477
 40.32 ACRES OR 1,756,268 SQUARE FEET
 TAX MAP: MAP HUI22, HU342
 ZONING: RDT
 WATERSHED: REDDY BRANCH, HAWLINGS RIVER WATERSHED
 STREAM CLASSIFICATION: REDDY BRANCH
 WSSC 200 SHEET: 226NW05, 226NW04, 227NW05, 227NW04
 ADC MAP: MAP 20; GRIDS K2, K3; MAP 21; GRIDS A1, A2, A3, B1, B2
 WATER AND SEWER CATEGORIES: PRIVATE WATER & SEWER
 100-YEAR FLOOD PLAIN: (10.131 ACRES) LOCATED BASED ON INFORMATION SHOWN ON
 PATUXENT RIVER WATERSHED - REDDY BRANCH SHEET 32 OF 51 DATED 1986 PUBLISHED
 BY THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION, AND BY
 STUDY #210237 PREPARED BY LDE, INC IN OCTOBER 2003, WHICH WAS APPROVED BY
 DPS WATER RESOURCES ON NOVEMBER 3, 2003.
 WETLANDS: 2.356 ACRES
 INTERMITTENT STREAMS: 709 FEET
 PERENNIAL STREAMS: 618 FEET

2. EXISTING SITE DATA

PROPERTY LINES SHOWN HEREON WERE TAKEN FROM FIELD OBSERVATIONS AND AVAILABLE RECORDS.
 THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION.
 HORIZONTAL DATUM SHOWN HEREON IS: WSSC
 TOPOGRAPHY AND EXISTING FEATURES SHOWN HEREON HAVE BEEN COMPILED FROM FIELD
 OBSERVATIONS AND AVAILABLE RECORDS.
 VERTICAL DATUM SHOWN HEREON IS: NAVD 88
 THE CONTRACTOR SHALL FIELD-VERIFY GRADES PRIOR TO COMMENCING ANY CONSTRUCTION
 ACTIVITIES. IF DISCREPANCIES ARE NOTED BETWEEN THE EXISTING CONDITIONS AND PLANS,
 CONTRACTOR SHALL INFORM ENGINEER IMMEDIATELY SO THAT APPROPRIATE MODIFICATIONS
 CAN BE MADE. CONTRACTOR SHALL ENSURE POSITIVE DRAINAGE WITHIN ANY DRAINAGE STRUCTURE.

3. UTILITIES DATA

UTILITIES LOCATIONS SHOWN HEREON ARE TAKEN FROM AVAILABLE PLANS AND FIELD OBSERVATIONS
 WHERE SURFACE INDICATIONS EXIST.

- A) THE CONTRACTOR SHALL HAND DIG TEST PITS AT ALL UTILITY CROSSINGS TO
 DETERMINE THE EXACT LOCATION AND DEPTH WELL IN ADVANCE OF CONSTRUCTION.
- B) FOR MARKING LOCATIONS OF FACILITIES, PLEASE CONTACT "MISS UTILITY" AT
 1-800-257-7777, 48 HOURS PRIOR TO ANY EXCAVATION OR CONSTRUCTION.
- C) THE CONTRACTOR SHALL FIELD-VERIFY ACTUAL GAS LINE LOCATIONS.

4. SOILS DATA

DATA SHOWN HEREON WAS OBTAINED FROM THE SOIL CONSERVATION SERVICE SOILS SURVEY
 FOR MONTGOMERY COUNTY, MARYLAND, MAP 14 AND INCLUDES:

- TYPE: 1B (GAILA SILT LOAM, 3 TO 8 PERCENT SLOPES, HYDRIC)
- 2B (GLENELG SILT LOAM, 3 TO 8 PERCENT SLOPES, HYDRIC)
- 1C (GAILA SILT LOAM, 8 TO 15 PERCENT SLOPES, HYDRIC)
- 5A (GLENVILLE SILT LOAM, 0 TO 3 PERCENT SLOPES, HYDRIC)
- 6A (BAILE SILT LOAM, 0 TO 3 PERCENT SLOPES, HYDRIC)
- 17C (OCCOQUAN LOAM, 8 TO 15 PERCENT SLOPES, HYDRIC)
- 5B (GLENVILLE SILT LOAM, 3 TO 8 PERCENT SLOPES, HYDRIC)
- 16B (BRINKLOW-BLOCKTOWN CHANNERY SILT, 3 TO 8 PERCENT SLOPES, HYDRIC)
- 17B (OCCOQUAN LOAM, 3 TO 8 PERCENT SLOPES, HYDRIC)
- 116C (BLOCKTOWN CHANNERY SILT LOAM, 8 TO 15 PERCENT SLOPES, VERY ROCKY, HYDRIC)
- 116D (BLOCKTOWN CHANNERY SILT LOAM, 15 TO 25 PERCENT SLOPES, VERY ROCKY, HYDRIC)

5. WETLAND NOTES

- A) WETLAND DELINEATION BY J. COOK CONSULTANTS - AUGUST, NOVEMBER 2007
- B) WETLAND BOUNDARY POINTS (FLAGS) HAVE BEEN SURVEY LOCATED.
- C) THIS DELINEATION HAS NOT BEEN VERIFIED BY USACE.
- D) THE STREAMS ON THIS SITE ARE A PORTION OF REDDY BRANCH, A TRIBUTARY OF
 HAWLINGS RIVER, A TRIBUTARY OF PATUXENT RIVER.
- E) THIS PROPERTY IS AN HISTORIC SITE.

BUILDING GROSS SQUARE FOOTAGES

<u>BUILDING</u>	<u>DIMENSIONS</u>	<u>SQUARE FOOTAGE</u>
EXISTING FARMHOUSE	43' x 70'	5,908 (TWO STORIES)
EXISTING CHICKEN COOP	31' x 96'	2,975
EXISTING DORMITORY/KITCHEN	73' x 68'	6,244 (TWO STORIES)
EXISTING BARN	54' x 51'	3,710 (TWO STORIES)
EXISTING COTTAGE	44' x 25'	1,120
PROPOSED DORMITORY	175' x 140'	19,354 (WITH BASEMENT)

GROSS FLOOR AREA OF EXISTING BUILDINGS: 19,957 SQUARE FEET

GROSS FLOOR AREA OF PROPOSED BUILDING: 19,354 SQUARE FEET

PROPOSED BASKETBALL COURT
 PROPOSED SEPTIC TANK

PROPOSED INITIAL SEPTIC SYSTEM

PARKING SCHEDULE

SPECIAL EXCEPTION USE: DOMICILIARY CARE

DOMICILIARY CARE OFF-STREET PARKING REQUIREMENTS: 1 (ONE) PARKING SPACE PER 4 BEDS AND 1 (ONE) PARKING SPACE PER 2 EMPLOYEES ON THE LARGEST WORK SHIFT.

PROPOSED BUILDING

PER ZONING CODE: 6 SPACES REQUIRED FOR 24 PROPOSED BEDS
 7 SPACES REQUIRED FOR 13 EMPLOYEES (LARGEST SHIFT)
 SPACES PROVIDED: 32 STANDARD SPACES, 2 HANDICAPPED SPACES

TOTAL REQUIRED PARKING SPACES: 13
 TOTAL PROVIDED PARKING SPACES: 34
 REQUIRED MINIMUM FOR HANDICAPPED: 2
 HANDICAPPED SPACES PROVIDED: 2

STANDARD PARKING SPACE SIZE:
 STANDARD SPACE: 9.5' x 20'
 HANDICAPPED SPACE: 10' x 20'

NOTE: NO EXISTING BUILDINGS HAVE PARKING REQUIREMENTS, AS ALL STUDENTS AND EMPLOYEES WILL OPERATE OUT OF PROPOSED DORMITORY.

NOTE: PROPOSED PARKING LOT TO BE PAVED WITH POROUS ASPHALT.

PERCENT IMPERVIOUS AREA COMPUTATIONS

<u>FEATURE</u>	<u>TOTAL AREA (SF)</u>	<u>AREA OUTSIDE BUFFER/ INSIDE PMA (SF)</u>	<u>AREA OUTSIDE PMA (%)</u>
EXISTING DRIVEWAYS	12,500	0	12,500
EXISTING BARN	2,531	650	1881
EXISTING CHICKEN COOP	2,975	833	2,142
EXISTING FARMHOUSE	2,954	178	2,776
EXISTING COTTAGE	1,395	1,395	0
EXISTING DORM/KITCHEN	3,497	0	3,497
EXISTING WALKWAYS	434	289	145
PROPOSED BLDG. AND ADJACENT PATIOS	13,111	13,111	0
PROPOSED PARKING	13,194	913	12,281
PROPOSED BASKETBALL	1,660	684	976
PROPOSED DRIVEWAY BEHIND PROPOSED BUILDING	9,400	9,400	0
PROPOSED WALKWAY	1,750	1,130	620
TOTALS	65,401	28,583	36,818

TOTAL AREA OF SPECIAL EXCEPTION = 1,756,340 SF
 AREA OUTSIDE ULTIMATE BUFFER AND INSIDE PMA = 1,199,120 SF
 AREA OUTSIDE PMA = 177,099 SF

PERCENT IMPERVIOUS OF SPECIAL EXCEPTION AREA = 65,401 SF / 1,756,340 SF = 3.72%
 PERCENT IMPERVIOUS OUTSIDE ULTIMATE BUFFER AND INSIDE PMA = 28,583 SF / 1,199,120 SF = 2.38%
 PERCENT IMPERVIOUS OUTSIDE PMA = 36,818 SF / 177,099 SF = 20.79%

TOTAL PARKING AREA	100%	12,817 SF
GREEN SPACE REQUIRED	5.0%	641 SF
GREEN SPACE PROVIDED	12.9%	1,659 SF

As can be seen, the new dormitory will be in the southeastern portion of the entire property, but in the southwestern portion of the 40 acre subject site. As indicated on the site plan, the total building floor area will be approximately 19,354 square feet, including an 8,000 square foot basement. The maximum height of the building to its highest peak will be 32 feet.

As noted by Technical Staff, Petitioner intends to design the dormitory building consistent with the overall character of the Our House complex, and the proposed building would be set back well over 300 feet from any lot line. Exhibit 26, p. 5. The architect's vision for the proposed building is shown in his renderings (Exhibits 5(b) and (c)):

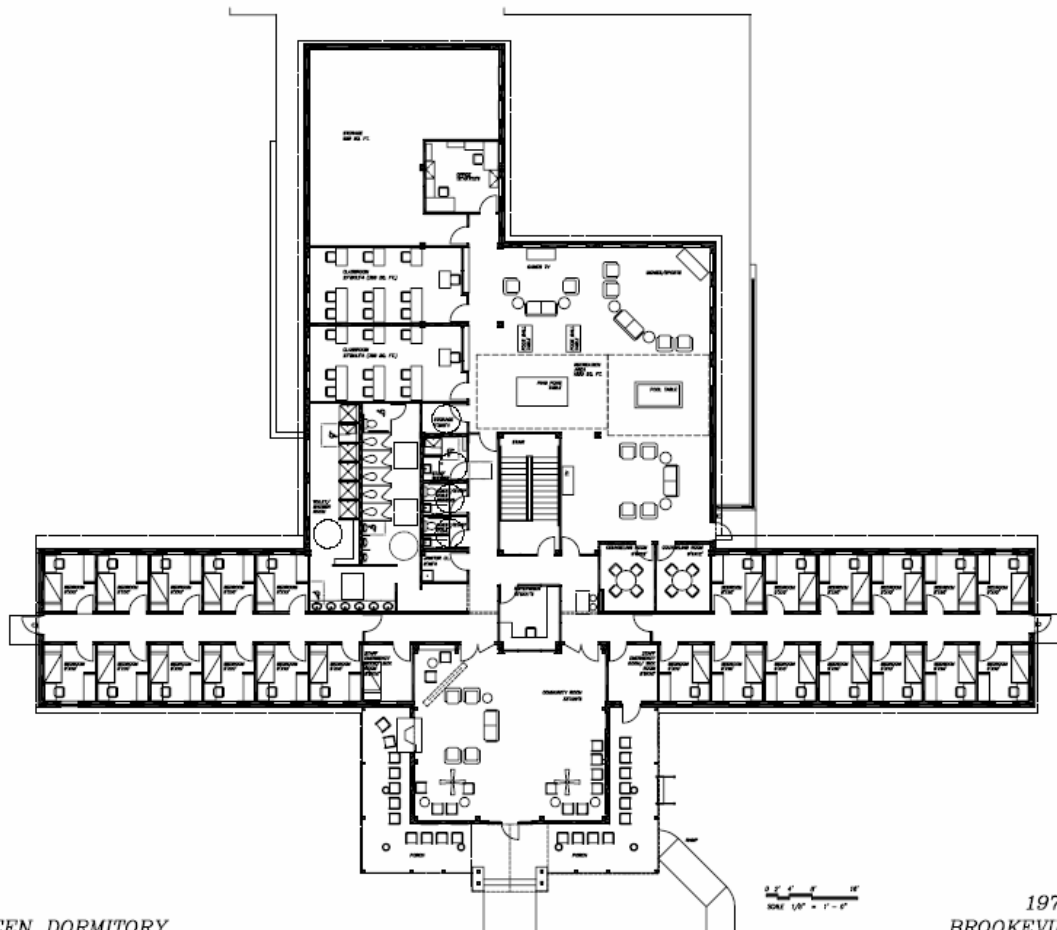
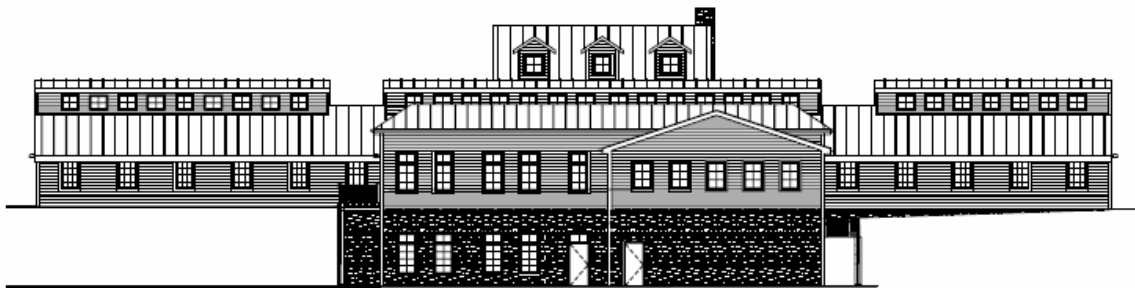


Front and rear elevations (Ex. 5(d)) and the first floor floor plan (Ex. 5(f)) are shown below:



FRONT ELEVATION

0' 2' 4' 8' 16'
SCALE 1/8" = 1' - 0"



OR
THE GREEN DORMITORY

0' 2' 4' 8' 16'
SCALE 1/8" = 1' - 0"

19715
BROOKEVILLE

Petitioner intends to seek LEED (Leadership in Energy and Environmental Design) Certification for the building at the top (platinum) level. Petitioner's counsel observed that this was an "aspirational goal." Tr. 151. One feature of this environmental effort is that the walls will be constructed of bricks that are made from the soil on the site, using a high compression machine and a small amount of cement. Moreover, in the lower level, there is a compost pit, which will significantly reduce water consumption. Tr. 77-78 and 124-125. The residents will participate in building the new dormitory that is proposed. Tr. 77.

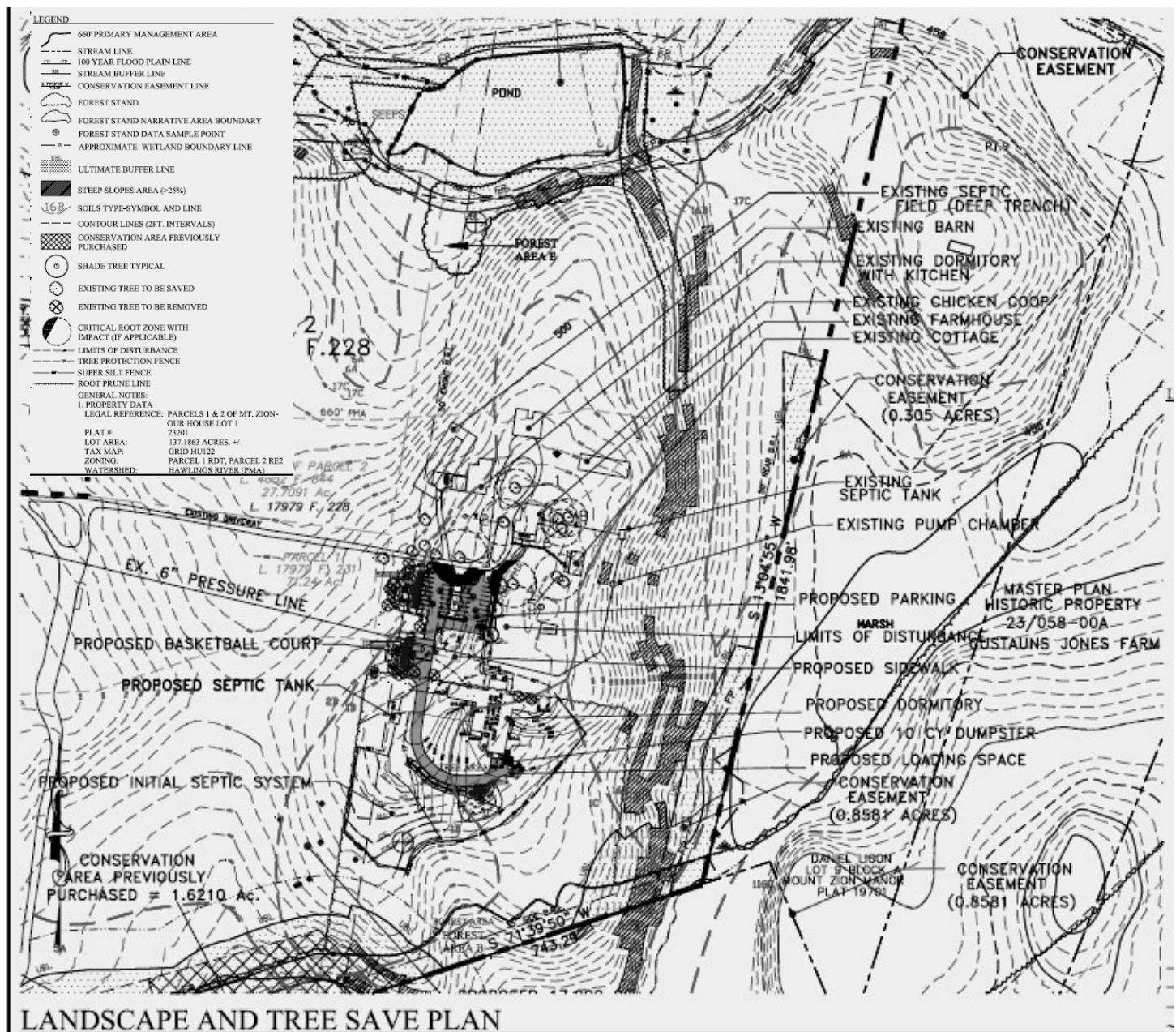
It should be noted that the Maryland Historical Trust has taken an easement on the property and all the buildings, which means that it must approve any changes. Petitioner's counsel, Stuart Barr, Esquire, explained that although there is a note on the site plan indicating that this is an historic site, it is a bit misleading because the property is not an historic resource or historic property requiring a work permit from the County Historic Preservation Commission. "It's not recognized by the County as an historic property or an historic site or an historic structure in any way. . . . It's not on the register. It's not on the atlas. It's not in any way, shape, or form recognized by the Montgomery County Historic Preservation Commission as an historic site or property or building." Tr. 70-71. Mr. Barr introduced the Deed of Preservation Easement held by the Maryland Historic Trust as Exhibit 30, and it is understood that the Trust would have to approve any changes made to on-site facilities. Michael Nott, Petitioner's administrator, will take steps to obtain the required approvals. Tr. 72-76. Petitioner agreed to the following condition recommended in Part V of this report to insure compliance and notice to the Board of Appeals: "Petitioner will comply with the requirements contained in the Easement from the Maryland Historical Trust and will submit confirmation of compliance to the Board of Appeals."

2. Landscaping, the Environment and Lighting:

The landscape plan for this site is a rather complicated, five page document, which conformed to Technical Staff's requirements. The plan is contained in Exhibit 24.

- (a) Overall Landscape Plan (1 of 3 sheets) for the 137 acre property
- (b) Landscape Plan & Tree Save Plan (2 of 3) for the 40 acre site
- (c) Landscape Plan (2a of 3) for limits of disturbance
- (d) Tree Save Plan (2b of 3) for limits of disturbance
- (e) Landscape Details (3 of 3)

Exhibit 24(b) is effectively the Landscape Plan for the 40-acre subject site, and it is reproduced below:



Petitioner's landscape architect, James Baish, testified that the exemption Petitioner requested from the forest conservation law was conditionally approved, but a tree save plan was required. Exhibit 9(b), letter of April 29, 2008. Mr. Baish further testified that he prepared the landscaping to buffer the parking lot headlights with evergreen screening on both sides. He also added landscaping to the bio-retention pond that is just off the edge of the parking lot. In the middle area, off the basketball court and parking lot, there is another bio-retention area with landscaping. And then, at the southern portion of the service drive to the rear of the new dormitory, there is a bio-retention pond, with landscaping. There is a dumpster proposed for trash pickup at the rear of the buildings, and there is evergreen screening provided surrounding that area. He does not anticipate any adverse impacts of this proposed construction upon the surrounding properties, given the amount of landscaping. Tr. 130-152.

The stormwater management concept plan (Exhibit 13(a)) was approved by the Department of Permitting Services by letter dated November 4, 2008. Exhibit 13(c). As summarized by Technical Staff, the stormwater management concept "consists of three biofiltration facilities for water quality control and rooftop disconnects to provide groundwater recharge. Provision of channel protection volume structures is not required because the one-year post development peak discharge is no more than 2.0 cubic feet per second." Exhibit 26, p. 10.

The Lighting and Photometric Plan is provided as Exhibit 7. Petitioner's architect, Stephen W. McLaughlin, testified that there would be 20-foot light poles on the parking lot, and individual light fixtures on the building providing light around the perimeter of the building at exits and walkways. All of those fixtures combined give off very low foot candles on the parking lot, and they taper off until they get to zero. There should not be any light spill to neighboring properties, and certainly not above the 0.1 foot candles required for residential neighborhoods. Tr. 128-129.

Technical Staff agreed, stating “The use will not cause any objectionable adverse effects. All exterior lighting will be installed and maintained in a manner not to cause glare or reflection into abutting properties.” Exhibit 26, p. 13. Mr. McLaughlin also testified that the proposed fixtures will provide adequate lighting for safety sake. Tr. 129.

3. Transportation and Parking:

Petitioner’s expert in transportation planning and traffic engineering, Craig Hedberg, testified (Tr. 84-98) that the site currently generates a maximum of 12 peak-hour trips. With the addition as proposed (*i.e.*, two additional staff and eight additional beds) there would be five additional trips added in the evening, which would result in a total maximum of 17 p.m. peak-hour trips. Only two additional trips would be added in the morning peak hour, going from an existing level of 11 to 13 trips in the a.m. peak hour. This expected trip generation is set forth in Table 1 from the Staff Report (Exhibit 26, p. 8):

**TABLE 1
SUMMARY OF TRIP GENERATION
OUR HOUSE DOMICILIARY CARE HOME**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Total Existing Peak-Hour Trips	8	3	11	4	8	12
Additional Peak-Hour Trips (Estimated for the Proposed Special Exception Modification)	2	0	2	2	3	5
Total Peak-Hour Site Trips w/Special Exception Modification	10	3	13	6	11	17

Source: Integrated Transportation Solutions, Inc., Our House Special Exception Modification Traffic Statement; February 4, 2009.

Since the 17-trip level is well below the 30 peak-hour trip criterion, there is no requirement for an analysis of the operations at off-site intersections. The PAMR mitigation percentage for Olney

currently is 10 percent. Because there will be only a five-trip increase, 10% of that would result in a half a trip PAMR mitigation requirement. For a PAMR requirement less than 1, there is no action or mitigation measure that the applicant is required to entertain. Thus, Transportation Planning staff did not recommend any transportation related conditions. According to Staff, the application meets the transportation-related requirements of the APF test, and the proposed modification will not have an adverse effect on the transportation network in the immediate area. Exhibit 26, p. 6.

Mr. Hedberg agrees with the Park and Planning Transportation staff's analysis in this case. This plan meets local area transportation review and policy area mobility review. There would be no negative impact on the surrounding roadway network as a result of this special exception modification. Based on 24 beds and 13 staff at one time, there would be a diminimus addition to the traffic network, and the nearby roadway network can adequately handle the traffic generated by this modification proposal. Tr. 88.

According to Mr. Hedberg, even if Our House proposed 16 staff at one time (*i.e.*, three more than the 13 they are proposing) and 32 beds (*i.e.*, eight more than the 24 being proposed), the number of trips generated would still be fewer than 30. It would not result in the need for an LATR traffic study and would not result in a transportation problem. In terms of PAMR, it may require some mitigation of no more than two trips. In his opinion, if these additional eight beds and three staff members were sought at some time in the future, they would not have any impact on pedestrian or vehicle safety on the site. Tr. 90-98.

The site is served primarily by one driveway, and that is a paved driveway. The plan is safe for both pedestrian and vehicular traffic. Tr. 88-89. Thirteen parking spaces are required by the Code, and 34 are present now. These spaces will be delineated in the improved parking lot, and there will be more than enough parking available. Tr. 89. Staff agreed with this assessment. Ex. 26, p. 11.

There is also no concern about impacts upon the surrounding residential community or nuisance as a result of any traffic or parking because the site is very isolated from the surrounding neighborhood. Tr. 89-90.

4. Operations (Residents, Staff, Deliveries and Trash Pick-up):

As has been discussed, Petitioner proposes to increase the number of residents (beds) utilized from 16 to 24, with flexibility to increase the number of residents (beds) to 32, and to increase the number of staff from 11 to 13 on site at any one time, with flexibility to increase the number of on-site staff to 16. Exhibit 3, pp. 5-6. Although Technical Staff recommended approval of the Modification Petition, it advocated conditions that would limit the number of residents (beds) to 24 and the number of on-site staff to 13. Exhibit 26, p. 1. The Planning Board also recommended approval, and without further discussion in its letter to the Board of Appeals, accepted the conditions recommended by Technical Staff (Exhibit 27).

The Hearing Examiner finds no logical basis for limiting Petitioner to 24 residents (beds) and 13 on-site staff. As Petitioner points out in its Statement in Support of the Petition (Exhibit 3, pp. 5-6, quoted in Footnote 2 of this report)) the existing special exception permits 81 resident beds and 40 on-site staff. Although that was part of the “hospital, sanitarium, nursing, or care home” special exception, which has since been reorganized in the Zoning Ordinance, it is clear that the Board of Appeals, in approving those numbers of residents and staff, felt that the subject site could accommodate them without unduly disturbing the neighbors.

The size of the subject site and its screening from its neighbors leads the Hearing Examiner to conclude that Petitioner could be given the flexibility to increase the number of residents (beds) to 32 and the number of on-site staff to 16, without causing any adverse effects upon the general neighborhood. This conclusion is buttressed by Mr. Hedberg’s testimony, discussed above, that

such an increase would not unduly strain the transportation network. The People's Counsel supports the additional flexibility and joined Petitioner in recommending conditions that would allow Petitioner to increase the number of residents (beds) to 32 and the number of on-site staff to 16, as long as PAMR mitigation requirements are met, as determined by Transportation Planning Staff. Exhibit 32. Those conditions, in slightly modified form, are recommended in Part V of this report.

With regard to deliveries and trash pick-up, Technical Staff recommended the following condition, which Petitioner has agreed to:

Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m., and trash pick-up is to be limited Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.

That condition is also recommended in Part V of this report.

C. The Master Plan

The subject property lies within the Northern Olney section of the Olney Master Plan area. The most recent Olney Master Plan was approved and adopted in 2005. Development of this property is also guided by the 1996 Rustic Roads Functional Master Plan (RRFMP). Since the subject petition is for modification of a special exception, the Board of Appeals has already approved the underlying use, and it is therefore assumed to be consistent with the applicable Master Plans. The only question here is whether the proposed changes would be inconsistent with those Master Plans.

The Olney Master Plan supports maintaining the agricultural and rural character of the area (Master Plan, p. 3) and recommends designing special exception uses so that they will not create negative impacts upon surrounding residential neighborhoods (Master Plan, p. 4). The Master Plan also recommends maintaining the current RDT Zone for Northern Olney (Master Plan, p. 17); preserving rural vistas; clustering impervious areas away from natural resources as much as possible (Master Plan, p.18); and using environmentally sensitive development techniques (Master Plan, p. 75).

Technical Staff concluded, “This proposal is consistent with past special exception approvals and conforms to the master plan’s goal of preserving agricultural lands in the northern Olney portion of the master plan.” Exhibit 26, p. 6.

As to the 1996 RRFMP, that Master Plan seeks to preserve the “historic alignment” of Brookeville Road, which is a rustic road abutting the northern portion of the property. Exhibit 26, p. 6. Staff notes that no change in alignment of the road is proposed, and the subject site is not in its viewshed. Therefore, Staff concluded that “this site conforms to the RRFMP master plan by protecting viewsheds and preserving the rustic character of the road.” Exhibit 26, p. 6.

Since the Olney Master Plan recommends maintaining the current RDT Zone, and that Zone permits the special exception in question,⁶ it is fair to conclude that the special exception use is consistent with the Master Plan. Moreover, the record in this case demonstrates that none of the changes proposed by Petitioner will have any negative impacts on the agricultural and rural character of the area, the environment or nearby residential neighborhoods. The Hearing Examiner therefore concludes that the proposed modifications are consistent with the 2005 Olney Master Plan and the 1996 RRFMP.

D. Impact of the Proposed Changes on the Neighborhood

There was no community (or other) opposition in this case. This fact is not surprising for three reasons – 1. The property is very large, and therefore its own size buffers the use from the neighbors; 2. More intense uses for the site were previously approved and utilized on the site (*See* footnote 2, on page 2 of this report); and 3. The proposed modifications will not greatly intensify the use nor change its character or its effects on the neighbors.

According to Jennifer Tereyla, Petitioner’s civil engineer (Tr. 98-116), the nearest residences to the site are the Riggs farmhouse and residence, to the northwest, and the Warfield property, on Lot

⁶ That permission is qualified by a footnote, as will be discussed in Part IV. B. of this report.

2, to the southwest of the proposed dormitory. Both are approximately 1,000 feet away. There is a significant amount of trees, floodplain and wetlands between the proposed dormitory and the residence on Lot 2 to the southwest, so one will not be able to see the proposed dormitory from the residence on Lot 2. From the farm residence on the Riggs property to the northwest, there is a tree line. They will be able to see where the proposed dormitory will go, but there is still a significant number of trees, and it is fairly well shielded.

Petitioner's landscape architect, James Baish, testified that he does not anticipate any adverse impacts of this proposed construction upon the surrounding properties, given the amount of landscaping. Tr. 130-152. As previously discussed, lighting will not intrude into the surrounding area, and the increase in traffic will have little impact on area roadways. Technical Staff found that "the proposal is compatible with the character of the neighborhood and will continue to maintain the purpose of the RDT zone." Exhibit 26, p. 16. Given these circumstances, the Hearing Examiner finds that the proposed changes will have little or no adverse impact on the neighborhood. None of the proposed changes fundamentally alters the nature of the use that has been existing on the subject site for years.

III. SUMMARY OF THE HEARING

Petitioner's counsel, Stuart R. Barr, Esquire, reviewed the history of special exceptions on the site and the Board of Appeals' formal acceptance of the special exception site as 40 acres unencumbered by the Transfer of Development Rights (TDR) easement affecting the remainder of the 137 acre property. Exhibit 15(b)(2). The Board also found that the special exception meets the criteria for a nursing or domiciliary care home under Zoning Ordinance §59-G-2.37 (Exhibit 15(b)(2) and Tr. 9-39). Mr. Barr adopted the findings, analysis and conclusions of the Technical

Staff (Exhibit 26), except for a reference on page 14 of that report to “public water and sanitary sewer service” operated by the WSSC. In fact, the property is served by well and septic. Tr. 41.

Petitioner called six witnesses at the hearing, Richard H. Bienvenue (Executive Director, Founder of Our House); Michael J. Nott (Administrator, Project Manager, Our House); C. Craig Hedberg (traffic engineer); Jennifer V. Tereyla (civil engineer); Stephen W. McLaughlin (architect); and James L. Baish (landscape architect). There were no other witnesses at the hearing.

A. Petitioner’s Case

1. Richard H. Bienvenue (Tr. 47-57; 124):

Richard Bienvenue testified that he is the founder and Executive Director of Our House. He is an educator who oversees the entire program to make sure that the young men are well taken care of, educated and move forward in life.

Our House opened up in 1993, outside of Brookeville at a summer camp. After about a year, the operation moved to Howard County for roughly eight years, while looking for property. After purchasing the subject site, it took approximately two years to get it ready for the use and occupancy, including all the health certificates and everything else. The young men did most of the work in rebuilding the dormitory.

Our House is a nonprofit residential program which provides job training to young men. They moved to the subject site about seven years ago, in December of 2002, and have been in operation for six and a half years. During the daytime the young men do carpentry work. They work an eight-hour construction day. In the evenings, six nights a week, they have two hours of academic or life skills classes. Every Saturday morning, the students do their community service.

Our House has a full-time social worker, and so the young men, in addition to their construction trades, get individual counseling and group counseling every week. The average stay

for the young men is 12 months. The average age is 17 years old, but Our House's state license permits participants from ages 16 to 21 years old.

Most of the boys come from the Department of Juvenile Services. A portion of them from the Department of Human Resources, as foster-care children. The young men are not violent. They are "Kids who are really willing to turn their lives around, take advantage of an opportunity, get a trade that's really worth tens of thousands of dollars." Tr. 50. When they graduate, they have a carpentry certificate, and the ones who are able will have a high school diploma, so they can get jobs.

Our House's success rate, defined as young men who are currently working, is approximately 80 percent. The recidivism rate (*i.e.*, committing a crime) is about 14%. Our House's program has received many accolades, nationwide. Mr. Bienvenue has been in touch with all the neighbors, and there are no issues.

The new dormitory will allow each boy to have his own room which has therapeutic and other benefits. Tr. 124.

2. Michael J. Nott (Tr. 57-84; 115):

Michael J. Nott testified that he is the administrator and business manager of Our House. As such, he takes care of all of the business and licensing issues with Our House and oversees the physical plant. He is the project manager for the proposed modifications.

Mr. Nott described the site and the existing facilities, and noted that there are 16 young men currently in the program. The boys are currently doubled up in the existing dormitory rooms. The boys renovated the existing barn.

According to Mr. Nott, the Maryland Historical Trust has taken an easement on the property and all the buildings, which means the state must approve any changes.

[Mr. Barr explained that there is a note on the current site plan that this is an historic site, but it is a bit misleading because the property is not an historic resource or historic property requiring a work permit from the County Historic Preservation Commission. “It's not recognized by the County as an historic property or an historic site or an historic structure in any way. . . . It's not on the register. It's not on the atlas. It's not in any way, shape, or form recognized by the Montgomery County Historic Preservation Commission as an historic site or property or building.” Tr. 70-71. Mr. Barr introduced the Deed of Preservation Easement held by the Maryland Historic Trust as Exhibit 30. They would have to approve any changes made to on-site facilities. He agreed to a condition of the special exception that the plans are approved by the Maryland Historic Trust, pursuant to this document, and if they are not, any changes that are proposed would be resubmitted to the Board of Appeals. Mr. Nott will take steps to obtain the required approvals. Tr. 72-76.]

The boys will participate in building the new dormitory that is proposed. Our House has 13 full-time employees, and nine part-time, but there is a maximum of 11 staff on-site at any given time. It is asking for permission for two more staff (*i.e.*, a total of 13) to cover the additional eight students (*i.e.*, a total of 24), but it would like the flexibility to add more students and staff, perhaps up to 16 staff members.

Our House has two vans to convey the boys and two construction pickup trucks. It also has one farm pickup that doubles as a snow plow in the winter. There is sprinkler system with an underground tank. The police and fire departments are each about 10 minutes away.

3. Craig Hedberg (Tr. 84-98):

Craig Hedberg testified as an expert in transportation planning and traffic engineering. Right now the site generates a maximum of 12 peak hour trips. With the addition as proposed (*i.e.*, two additional staff and eight additional beds) there would be five additional trips added in the evening,

which would result in a total maximum of 17 p.m. peak-hour trips. Only two additional trips would be added in the morning peak hour, going from an existing level of 11 to 13 trips in the a.m. peak hour.

Since the 17-trip level is well below the 30 peak-hour trip criterion, there is no requirement for an analysis of the operations at off-site intersections. The PAMR mitigation percentage for Olney currently is 10 percent. Since there will be only a five trip increase, 10% of that would result in a half a trip PAMR mitigation requirement. For a PAMR requirement less than 1, there is no action or mitigation measure that the applicant is required to entertain.

Mr. Hedberg agrees with the Park and Planning Transportation staff's analysis in this case. There would be no negative impact on the surrounding roadway network as a result of this special exception modification. Based on 24 beds, 13 staff at one time, the nearby roadway network can adequately handle the traffic generated by that modification proposal. This proposal would create a diminimus addition to the traffic network. This plan meets local area transportation review and policy area mobility review.

The site is served primarily by one driveway, and that is a paved driveway. The plan is safe for both pedestrian and vehicular traffic. Thirteen parking spaces are required by the Code, and 34 are present now, and will be delineated. So there will be a significant overage of parking.

There is also no concern about impacts to surrounding residential community or nuisance as a result of any traffic, parking, circumstances because the site is very isolated from the surrounding neighborhood.

If Our House proposed 16 staff at one time (three more than the 13 they are proposing) and 32 beds (eight more than the 24 being proposed), the number of trips generated would still be fewer than 30. It's not going to result in the need for an LATR traffic study and won't result in a transportation

problem. In terms of PAMR, it may require some mitigation of no more than two trips. If these additional eight beds and three staff members were sought at some time in the future, they would not have any impact on pedestrian or vehicle safety on the site.

4. Jennifer V. Tereyla (Tr. 98-116):

Jennifer V. Tereyla testified as an expert in civil engineering. She prepared the plans for the site. In addition to planning for potential stormwater management, she also sited a new septic field for the proposed dormitory and proposed a conceptual grading plan, to divert water away from the proposed dormitory to the bio-filtration area. There is currently no stormwater management system on site, and the site is exempt from channel protection requirements because there's enough grassed area within the drainage area that it keeps the quantity down and the flow would be less than two cubic feet per second for channel protection volume. Her plan would provide quality control.

The front portion of the site is the western border of the 40-acre portion that's called the subject site. The rear portion is the red line all the way to the eastern extreme of the 40-acre subject site. The side property lines are parallel to Brookeville Road on the north and the Olney Boys and Girls Club on the south. All setback requirements are met. The nearest residences to the site are the Riggs farmhouse and residence, to the northwest, and the Warfield property, on Lot 2, to the southwest of the proposed dormitory. Both are approximately 1,000 feet away. There is a significant amount of trees, floodplain and wetlands between the proposed dormitory and the residence on Lot 2 to the southwest, so one will not be able to see the proposed dormitory from the residence on Lot 2. From the farm residence on the Riggs property to the northwest, there is a tree line. They will be able to see where the proposed dormitory will go, but there is still a significant number of trees, and it is fairly well shielded.

The site is in the Patuxent Primary Management Area. The well and septic proposal was approved by DPS (Exhibit 23(b)). There is an existing well, and if it suffices, it will be used. Otherwise, there are plenty of locations on the property to have a new well to replace that one. This site adequately served by public facilities. Gas and electric currently serve the existing buildings.

5. Stephen W. McLaughlin (Tr. 116-130):

Stephen W. McLaughlin testified as an expert in architecture. He designed the proposed building based on Our House's requirements to show 24 individual rooms, and came up with the shape and size indicated on the site plans. Mr. McLaughlin then discussed the plans for the site.

The main floor is on grade with the lawn area in front of the administration building. It faces the administration building. Two wings will contain 24 individual dormitory rooms and one additional sick room for the 24 residents. In the center of the building, there is a control area, a supervisor's space, located so that he can see down the hallway, just for the security and safety of all of the individuals. From that location they can also see the recreational and educational areas of the building. This consolidates a lot of the functions that are on-site right now into one building. There also will be a community room where there would be a quiet study area, and an area where they can meet with other members of the community.

On the lower level, there a commercial kitchen for the preparation of the food, and also a dining area large enough for a single table for eating, because this is one family.

Other individual features of LEED certification are that the walls will be constructed of bricks that are made from the soil on the site, using a high compression machine, and a little bit of cement, and in the lower level, there is a compost pit, which will reduce water consumption quite a bit.

Mr. McLaughlin also discussed renderings of the proposed building contained in Exhibit 5, and testified that the appearance of the proposed building would be appropriate for the site from an

architectural standpoint. It would be compatible with the buildings that are there, such as the farmhouse.

Mr. McLaughlin further testified that there would be 20-foot light poles on the parking lot, and individual light fixtures on the building providing a little bit of light around the perimeter of the building at exits and walkways. All of those combined give very low foot candles on the parking lot, and they taper off until they get to zero. There should not be any light spill to any neighbors whatsoever, and certainly not above the 0.1 foot candles required for residential neighborhoods. Nevertheless, it will provide adequate lighting for safety sake.

6. James L. Baish (Tr. 130-152):

James L. Baish testified as an expert in landscape architecture. Mr. Baish prepared the natural resource inventory and forest stand delineation, the exemption request from the forest conservation law, the landscape plan and the tree save plan. He testified that the requested exemption from the forest conservation law was conditionally approved, but a tree save plan was required. Exhibit 9(b), letter of April 29, 2008. Mr. Baish submitted updated landscape and tree save plans, Exhibits 24(a) through (e), and explained them.

Exhibit 24(a) is the overall landscape plan for the 137-acre property; Exhibit 24(b) is the landscape plan, tree save plan for the 40-acre site; Exhibit 24(c) is the landscape plan for the limits of disturbance; Exhibit 24(d) is the tree save plan for the limits of disturbance area; and Exhibit 24(e) is the detail sheet which calls out all of the technical references to the plant material and to the tree protection devices for the tree save plan.

Exhibit 24(a) shows there are two primary management areas for the Patuxent River watershed, and they are indicated because of a stream that crosses the northern portion of the site, and a stream that touches the lower southern portion of the site, leaves it, and then just skirts the

edge of it again on the southeastern corner. That presumed primary management area is indicated on this plan, 660 feet away from that stream end. Within it there are established buffers.

Mr. Baish further testified that he prepared the landscaping to buffer the parking lot headlights with evergreens screening on both sides. He also added landscaping to the bio-retention pond that is just off the edge of the parking lot. In the middle area, off the basketball court and parking lot, there is another bio-retention area with landscaping. And then, at the bottom southern portion of the service drive to the rear of the new dormitory, there is a bio-retention pond as well, with landscaping. There is a dumpster proposed for trash pickup at the rear of the buildings, and there is evergreen screening provided surrounding that area. He does not anticipate any adverse impacts of this proposed construction upon the surrounding properties, given the amount of landscaping.

Petitioner will seek LEEDS certification for the building at the top (platinum) level. [Mr. Barr added that that was an “aspirational goal.” Tr. 151.]

B. People’s Counsel

Martin Klauber, the People’s Counsel, did not present any witnesses at the hearing, but he did participate, and he recommended approval of the requested special exception modification, plus some flexibility to increase the number of beds and staff. As stated by Mr. Klauber (Tr. 45):

. . . Sometimes I get privileged to get involved with a special exception use that is so in the public interest. And this is one of those special exceptions that has undertaken a function that this County needs.

It has been, it will be in the public interest to deal with young men in need. The Office of the People's Counsel support[s] this requested modification. And I would be extremely happy to work with Mr. Barr on a condition that provides some kind of future flexibility for this incredible use to proceed without, with as much ease as it can in the basic function that it fulfills for these young men and Montgomery County. It would be a privilege to help this organization and this special exception holder do that.

At the conclusion of the hearing, Mr. Klauber added (Tr. 161):

As I said in the beginning, I say in the end, this is so in the public interest that, you know, it's pretty simple. The hearing examiner and anybody who knows a little bit about it understands what these people are, have been so successful at, and it's just really nice to have them in Montgomery County.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. A special exception use is deemed presumptively compatible within the zoning district in which it is authorized, unless specific adverse conditions at the proposed location are shown to overcome the presumption. Pre-set legislative standards are both specific and general.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. As discussed in Parts I and II. D. of this report, the proposed modifications would not change the nature or character of the special exception; nor are the proposed changes so extensive as to create substantial adverse effects on the surrounding neighborhood. Therefore, the scope of this inquiry is limited by statute to “discussion of those aspects of the special exception use that are directly related to [the modification] proposals” and does not include a review of the “underlying special exception[s].” Nevertheless, the changes proposed by Petitioner do require a review under the standards established by the Zoning Ordinance for evaluating special exceptions.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational

characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home use. Characteristics of the proposed modification that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggested the following inherent characteristics of a domiciliary care home use: (1) buildings and structures, as well as outdoor passive areas for the residents and visitors; (2) lighting; (3) traffic to and from the site by staff, visitors and residents; (4) deliveries of supplies and trash pick-up; (5) parking areas to accommodate visitors and staff; (6) noise associated with the loading and unloading of food and equipment and garbage pick-up. Exhibit 26, p. 11. The Hearing Examiner accepts that listing as a fair description of the inherent characteristics of a domiciliary care home. Technical Staff concluded that “the inherent characteristics of size, scale and scope

associated with the proposed application are minimal and not likely to result in any unacceptable noise, traffic disruption, or environmental impacts at the proposed location. Adequate parking is available for the residents, visitors and employees of the proposed domiciliary care home. Existing tree buffers and sufficient landscaping is proposed in order to maintain the general character of the neighborhood. There are no non-inherent adverse affects associated with the application.” Exhibit 26, p. 11. The Hearing Examiner agrees. Moreover, even if some of the listed characteristics were classified as non-inherent, the Hearing Examiner finds that the proposed modifications will not result in adverse effects sufficient to warrant denial of the modification petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: A domiciliary care home is a permitted special exception in the RDT Zone under Zoning Ordinance §59-C-9.3(h); however, footnote 48 to that section provides that the use is prohibited, “[i]f property is encumbered by a recorded transfer of developments rights easement . . .” In this case, although part of the 137-acre property is encumbered by such an easement, the 40-acre site carved out for the special exception has no such easement, and the Board of Appeals has accepted that 40-acre tract as the special exception site. Exhibit 15(b)(2). The subject special

exception is therefore permitted in the Zone.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.37, as detailed in Part IV. C., below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: As discussed in Part II.C. of this report, the subject property is consistent with the applicable Olney Master Plan and the Rustic Roads Functional Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The proposed domiciliary care home will be in harmony with the general character of the neighborhood for the reasons discussed in Part II. of this report. As noted by Technical Staff (Exhibit 26, p.12), the scale and height of the new two-story building will have minimal impact on the natural environment, and setbacks are well over 300

feet from any adjacent lot lines. The subject site is adequately served by public facilities. Exhibit 26, p. 14. The Hearing Examiner so finds.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that, with the current and proposed landscaping buffers, the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As noted, the proposed new dormitory will be set back far from the surrounding neighborhood and is well screened from surrounding property. There is no evidence that the use, which has been on the site since 2002, has caused any objectionable noise, vibrations, fumes, odors, dust illumination, glare, or physical activity in the past. The requested modifications will not significantly change those operational characteristics. Lighting is further discussed in Part IV. D., below.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The evidence supports the conclusion that the proposed special exception would not increase the number, intensity or scope of special exception uses sufficiently to

affect the area adversely. As noted in the Technical Staff report, there is only one other special exception in the area (Exhibit 26, p. 13), and the surrounding area is predominantly agricultural, not residential in character. The proposed use will not adversely affect or alter the nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The continuation of a domiciliary care home that has existed for almost seven years at this location will continue to provide a service to its residents and to the community.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Petitioner's civil engineer, Jennifer Tereyla, testified that there is an existing well on site, and if it suffices, it will be used. A well and septic proposal was approved by DPS (Exhibit 23(b)), and the site is adequately served by other public facilities. Tr. 113-114. Technical Staff also reports that the subject site "is adequately served by public facilities." Exhibit 26, p. 14. There is no contrary evidence, and the Hearing Examiner so finds.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.*

- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board of Appeals must determine the adequacy of public facilities, including Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (“PAMR”). Both Petitioner’s transportation expert, Craig Hedberg, and Technical Staff reviewed these issues and found that both LATR and PAMR are satisfied, as discussed in Part II. B. 3. of this report. For the reasons set forth in Part II. B. 3. of this report, the Hearing Examiner agrees with their conclusions and so finds.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Mr. Hedberg testified the plan is safe for both pedestrian and vehicular traffic. Tr. 88-89. The evidence of record supports that finding, and the Hearing Examiner therefore concludes that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards: Nursing home or domiciliary care home.

The specific standards for a domiciliary care home are found in Zoning Ordinance § 59-G-2.37. The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the proposed modification would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) *A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Group home") may be allowed if the board can find as prerequisites that:*

(1) *the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;*

Conclusion: For the reasons already discussed in this report, the Hearing Examiner finds that the proposed modifications will not adversely affect the present character or future development of the surrounding “residential” community due to bulk, traffic, noise, or number of residents.

(2) *the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and*

Conclusion: As stated by Technical Staff, “The new dormitory building will be architecturally compatible with other buildings on the Our House property and the surrounding neighborhood.” Exhibit 26, p. 17. The Hearing Examiner so finds.

(3) *the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.*

Conclusion: This point was also addressed by Technical Staff: “The portion of the property subject to the special exception is a large 40 acre tract of land and the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.” Exhibit 26, p. 17. The Hearing Examiner so finds.

(4) *The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.*

Conclusion: There will be staff on site at all times, but no new living quarters for staff have been proposed.

(b) *The following requirements must apply to a nursing home housing 5 patients or less:*

- (1) *The minimum lot area must be as stated for the applicable zone but in no case less than 7,500 square feet.*
- (2) *The minimum street frontage must be 50 feet.*
- (3) *Minimum setbacks, minimum green area, maximum coverage and maximum height are those prescribed in these regulations for the zone.*

Conclusion: Not applicable.

(c) *The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.*

- (1) *The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.*

Conclusion: This site is classified in the RDT Zone, which is a rural zone. The applicant proposes a maximum of 32 beds. The area required would thus be 64,000 square feet (32 beds x 2,000 square feet per bed), which amounts to about one and a half acres. Since that is less than 5 acres, the five-acre minimum would apply. The subject site is 40 acres, greatly exceeding that figure, and the lot area requirement is therefore satisfied.

- (2) *In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater: . . .*

Conclusion: Not applicable

- (3) *Minimum side yards are those specified in the zone, but in no case less than 20 feet.*

Conclusion: To determine side-yard setbacks, one must ascertain which are the front and rear and which are the side yards. According to Jennifer Tereyla, Petitioner's civil engineer (Tr. 98-116), the front portion of the site is the western border of the 40-acre portion

that is called the subject site. The rear portion is the property line all the way to the eastern extreme of the 40-acre subject site. The side property lines are parallel to Brookeville Road on the north and the Olney Boys and Girls Club on the south.

Technical Staff reports that “The proposed dormitory building has an approximately 300-foot setback on the south side and approximately 1,500 feet on the north side.”

These setbacks far exceed what is required.

- (4) *Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.*

Conclusion: Technical Staff notes that there is no minimum green area in the RDT Zone. The use complies with applicable development standards, as set forth in the following chart from page 15 of the Technical Staff report.

Development Standard Table

	<u>Required</u>	<u>Proposed</u>
Minimum lot area	5 acres	40 acres
Maximum lot coverage (.59-C-9.46)	10% of lot area	1.3%
Minimum lot width at street line at building line	25 feet 125 feet	1858 feet 900 feet
Maximum building height	50 feet	32 feet
Minimum setbacks (59-C-1-323) Front Side	50 feet 20 feet	160 feet 357 feet
Minimum rear setback	35 feet	390 feet

- (d) *Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.*

Conclusion: The maximum of 32 beds would require 8 spaces ($32/4 = 8$). Sixteen employees constitute the largest work shift, thus requiring 8 additional parking spaces ($16/2 = 8$). Therefore, the total required parking, even if Petitioner expands to 32 residents (beds) and 16 on-site employees, is 16 spaces. There are 34 spaces provided on the site, and therefore Petitioner will more than meet the parking requirements.

- (e) *An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.*

Conclusion: The final site plan is comprised of Exhibits 32(a) and (b). There are also landscape and other plans. Technical Staff reports that Petitioner has provided the required information. Exhibit 26, p. 19.

- (f) *An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.*

Conclusion: Petitioner has indicated that it may wish to expand to 32 residents (beds) and 16 on-site staff in the future. For the reasons stated in Part II. B. 4 of this report, the Hearing Examiner recommends that Petitioner be given this flexibility, under conditions recommended in Part V of this report.

- (g) *Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.*

Conclusion: Not applicable to this petition.

- (h) *Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.*

Conclusion: Not applicable to this petition.

D. General Development Standards

59-G § 1.23. General development standards

- (a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: For this special exception, the applicable development standards are specified in Section 59-G-2.37, which, in part, incorporated the zone's standards. These requirements and Petitioner's compliance with them were discussed in Part IV. C., above. The use complies with applicable development standards.

- (b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: For this special exception, the applicable parking requirements are specified in Section 59-G-2.37(d). These requirements and Petitioner's compliance with them have been discussed in Part IV.C., above. The use complies with applicable parking requirements.

- (c) ***Minimum frontage.*** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*

(5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*

(6) *Riding stables.*

(7) *Helipport and helistop.*

Conclusion: This special exception is not included in the above list. Moreover, the proposed use will not result in any change in the site's frontage, which meets required standards.

(d) ***Forest conservation.*** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Environmental Planning staff approved an exemption from the forest conservation law (FCP exemption # 42008165E), with a condition requiring a tree save plan, which Petitioner has provided (Exhibits 24(b) and (d)).

(e) ***Water quality plan.*** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Inapplicable. This provision applies only to sites within a Special Protection Area, which is not the case here. In any event, Petitioner's stormwater management concept plan (Exhibit 13(a)) was approved by the Department of Permitting Services by letter dated November 4, 2008. Exhibit 13(c).

(f) ***Signs.*** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner has not proposed any new signs.

- (g) ***Building compatibility in residential zones.*** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: The site is not in a residential zone; however, as Staff notes, the proposal is compatible with the character of the neighborhood and will continue to fulfill the purpose of the RDT zone. Exhibit 26, p. 16. The evidence of compatibility has been discussed at various locations in this report, and the record supports a finding that the use will continue to be compatible with its surroundings after incorporating the proposed modifications.

- (h) ***Lighting in residential zones.*** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: The site is not in a residential zone, however, as reported by Staff (Exhibit 26, p. 16),

the lighting plan adequately and efficiently covers the main vehicular access to the site, as well as the parking, recreational and loading areas; in order to create a safe vehicular and pedestrian environment. The light fixtures directly adjacent to the parking facilities and basketball court are metal halide, full cutoff poles mounted at 20-feet above grade. The average foot candle level within the parking facility is 1.8 (with a range of 6.5 to 0.4). The lighting fixtures directly adjacent to the proposed dormitory are a combination of metal halide wall mounts and compact fluorescent exterior down lighting; both types will be installed at a minimum of 8-feet above grade. The lighting levels do not exceed 0.1 foot candles along the side and rear lot lines.

Petitioner's architect, Stephen W. McLaughlin, testified that there should not be any light spilling into any neighbor's property, and certainly not above the 0.1 foot candles required for residential neighborhoods. Tr. 128-129. Given this record, the Hearing Examiner finds that there will not be objectionable illumination or glare at the site, nor will there be light spillage into any nearby residential areas.

Based on the testimony and evidence of record, I conclude that the changes proposed by Petitioner meet the specific and general requirements for the use, and that the Modification Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-717-B, which seeks to modify an existing special exception for a domiciliary care home located at 19715 Zion Road, Brookeville, Maryland, be *granted* with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.
3. The maximum allowable number of residents (beds) must not exceed 32. If the number of residents (beds) exceeds 24, then Petitioner must submit a document to Technical Staff indicating its intention to increase the number of residents (beds), and must comply with any applicable Policy Area Mobility Review (PAMR) trip mitigation requirements, as determined by Technical Staff.

4. The maximum number of employees on-site at any one time must not exceed 16. If the maximum number of employees on-site at any one time exceeds 13, then Petitioner must submit a document to Technical Staff indicating its intention to increase the number of on-site employees, and must comply with any applicable Policy Area Mobility Review (PAMR) trip mitigation requirements, as determined by Technical Staff.
5. If the number of residents (beds) exceeds 24 or if the maximum number of employees on-site at any one time exceeds 13, Petitioner must submit, to the Board of Appeals, a memorandum from M-NCPPC Transportation Planning Staff confirming that PAMR requirements have been satisfied. Petitioner must also submit an expansion plan to the Board of Appeals showing the location and form of any intended expansion.
6. Petitioner will comply with the requirements contained in the Easement from the Maryland Historical Trust and will submit confirmation of compliance to the Board of Appeals.
7. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m., and trash pick-up is to be limited Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.
8. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and

handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 9, 2009

Respectfully submitted,

Martin L. Grossman
Hearing Examiner